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OFFICE OF PETITIONS

ON PETITION

In re Application of
Darrow et al.
Application No. 10/083,245
Filed: February 25, 2002
Attorney Docket: U 013888-7

This is a decision on the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed October 20, 2006.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This above-identified application became abandoned for failure to timely file a proper reply to the final Office Action of October 12, 2005. An amendment was filed on December 9, 2005. This application became abandoned on January 13, 2006. A Notice of Abandonment was mailed on June 28, 2006. A petition was dismissed on October 12, 2006.

On renewed petition, petitioner reiterates the argument presented in the original petition. Petitioner states that the Applicants by right expected either an advisory action or a Notice of Allowance pursuant to MPEP §714.13 III.

Petitioner's argument has been considered but it is not convincing to establish the holding of abandonment should be withdrawn.

Pursuant to MPEP § 714.13 II, failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment. A reply under 37 CFR 1.113 is limited to:

- (A) an amendment complying with 37 CFR 1.116;
- (B) a Notice of Appeal (and appeal fee); or
- (C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission (i.e., an amendment that meets the reply requirement of 37 CFR 1.111) and the fee set forth in 37 CFR 1.17(e). RCE practice under 37 CFR 1.114 does not apply to utility or plant patent applications filed before June 8, 1995 and design applications.

Petitioner was informed in the Final Office Action that the statutory time period for reply could not be extended beyond the six months from the mailing of the Final Office Action. Pursuant to 37 CFR 1.116 (c), the admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination from termination. Further MPEP 711.03 (c) is clear that an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, when the applicant simply permits the maximum extendable statutory period for reply to expire while awaiting a notice of allowance or other action.

Petitioner is reminded that it is applicants' responsibility to file not only a timely but proper reply to the outstanding Office action. This application was abandoned because petitioner failed to file a proper reply to the final Office action not because the Office did not mail a Notice of Allowance or advisory action.

Alternative Venue

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

The filing of a petition under 37 C.F.R. § 1.137(b) cannot be intentionally delayed, and therefore, must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 C.F.R. § 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally

Further correspondence with respect to this matter should be addressed as follows:

By delivery service:
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